Supreme Court, U.S.
FILED

021869 APR 5 2003

No.

In the
Supreme Court of the United States

JOSEPH J. HOUSE,
Petitioner-Appellant,

*v.*

COPLEY PRESS INC,
FOX VALLEY PUBLICATIONS INC,
JOLIET HERALD NEWS,
Respondents - Appellee,

AND

MIDWEST SUBURBAN PUBLISHING INC,
DAILY SOUTHTOWN,
CARTER NELSON,
Respondents - Appellee.

**On Petition For Writ Of Certiorari**
**To The Court Of Appeal**
**Of the State of Illinois,**
**Third Appellate District**

# PETITION FOR WRIT OF CERTIORARI

Joseph J. House
210 Muehl
Lockport, Illinois 60441
Telephone: 815.838.6182

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## QUESTIONS PRESENTED

I. WHETHER THE FAIR REPORT PRIVILEGE EXTENDS TO THE REPUBLICATION OF A GOVERNMENT PRESS RELEASE THAT CONTAINS TWO PARTS:

A. THE ELEMENTS OF A PROCEEDING :

1. AN ACCOUNT OF A UNITED STATES TAX COURT PROCEEDING

B. A CALUMNY UNDER THE COLOR OF LAW.

1. A FALSE STATEMENT THAT PLAINTIFF RECOMMENDED FRAUDULENT SCHEMES TO OTHERS, CONSPIRED WITH 163 OTHERS AND SET UP 163 CORPORATIONS FOR OTHERS TO USE TO FURTHER A FRAUDULENT SCHEME.

II. WHETHER AS APPLIED IN THIS CASE THE ILLINOIS SUPREME COURTS ADOPTION OF THE DEFINITION OF THE FAIR REPORT PRIVILEGE PROVIDED IN THE RESTATEMENT (SECOND) OF TORTS ,SECTION 611, VIOLATES THE PLAINTIFFS RIGHTS UNDER THE FIFTH, SIXTH AND EIGHTH AMENDMENTS OF THE UNITED STATES CONSTITUTION.

III. WHETHER AS INTERPRETED BY THE APPEALS COURT OF THE THIRD DISTRICT THE PRIVILEGE IS REALLY A CONCLUSIVE PRESUMPTION, AND THUS, VIOLATES DUE PROCESS.

## PARTIES TO THE PROCEEDING

| | |
|---|---|
| Petitioner Appellant<br>Pro se | Joseph J. House<br>210 Muehl<br>Lockport, Illinois 60441<br>Telephone 815-838-6182<br>Fax 815-838-2672 |
| Respondent Appellee | Copley Press Inc<br>Fox Valley Publications Inc<br>Joliet Herald News<br><br>And<br><br>Midwest Suburban Publishing Inc<br>Daily Southtown<br>Carter Nelson<br><br>Represented by<br><br>Attorney Peter Storm<br>Law Firm Cooper and Sotrm<br>117 Second Avenue<br>Geneva, Illinois 60134 |

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## I. THE UNITED STATES SUPREME COURT HAS JURISDICTION

28 U.S.C.§ 1257 states in pertinent parts :

> (a) final judgements or decree rendered by the highest Court in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question on the grounds of it being repugnant to the Constitution, treaties, or laws of the United States. . . .

This case involves the validity of the application of state statute and the Illinois Supreme Courts interpretation of the Fair Report privilege as set forth in the Restatement (Second) of Torts § 611. On the grounds of its being repugnant to the Constitution. Petitioner asserts that the Illinois Supreme Courts interpretation of the Fair Report Privilege is unconstitutional, in general, and as it was applied in this case.

The issue was first raised in the appeal court of the of the Third District in the state of Illinois by the petitioner after petitioner's case was dismissed on motion of the defendants with the circuit court finding that the fair report privilege extended to the publication at issue. The appellate court, relying on the Illinois Supreme Court's interpretation of the of the Restatement (Second) of Torts § 611, affirmed the lower court's dismissal. Petitioner sought review by the Illinois Supreme Court on the grounds that application of the fair report privilege violated the Petitioner's Fifth, Sixth and Eighth amendment rights granted under the Constitution. The Illinois Supreme Court refused to consider the case. The issue has been raised, preserved, and passed upon by the Illinois Supreme Court. The petitioner has exhausted his state court remedies on the issues raised in this petition.

## CONSTITUTIONAL PROVISIONS

## II. THE STATE COURT'S DECISION IS VALID IF, AND ONLY, IF, THE FAIR REPORT PRIVILEGE GRANTED TO THE MEDIA:
## 1. IS AN ABSOLUTE PRIVILEGE AND IF,
## 2. A PRESS RELEASE OUTWEIGHS A JUDICIAL RECORD IN MEASURING THE ACCURACY OF A STORY PRINTED IN THE MEDIA.

The circuit court granted defendants motion to dismiss plaintiff's defamation law suit when defendants invoked the fair report privilege on an article written, substantially repeating an IRS press release. The article and press release included a calumny under the color of law that plaintiff conspired with 163 people to defraud the U.S. of taxes. When defendants knew or should have known that the calumny was false, they took no action to prevent damage or harm to the plaintiff. The circuit court ruled that no set of facts established by the plaintiff could sustain an action against the defendants once the fair report privilege was applied to the article written. No discovery was allowed on the issue of the calumny. On appeal to the appellate court, plaintiff argued that the state's interpretation of the fair report privilege violated:

1. The due process provision of the Constitution. The calumny was the most defamatory part of the article.
2. The article was not fair since it stated as a matter of fact that plaintiff committed a felony of an ongoing conspiracy to defraud the U.S. of taxes when there was nothing in the record of the tax court case to support such a statement, there was no occurrence. No official action had been taken, the article was not a fair and accurate account of the proceeding, and the gist of the article was false.
3. The calumny was a violation of law, obstructing the justice the plaintiff sought from the tax court and dismissal of plaintiff's suit left plaintiff no remedy to recover that which would repair his name and prevent him further harm.

The Illinois courts were protecting one who had violated the law by applying the fair report privilege in an absolute manner.

The Illinois Supreme Court refused to reconsider their interpretation of the fair report privilege which was used by the Appellate Court in reaching their decision to affirm the lower court's dismissal.

The spirit of the fair report privilege is found in the Restatement (Second) of torts § 611 . The inappropriate use of the fair report privilege is discussed in the Restatement (Second) of Torts . . Torts @ 611 considers the nature of the article when applying the fair report privilege . Publication that contains a scheme to defame is denied a privilege . Publication that does not contain an occurrence can be denied the privilege. Illinois Appellate decisions leave no avenue to deny the privilege and are therefore presumptive to the conclusion that no set of facts can overcome the privilege.

The First amendment to the constitution grants the news media free speech and application of the Restatement (Second) of Torts, creates a fair report privilege for the media, The conflict between free speech and an individuals rights under the Fifth, Sixth and Eighth amendments are applied based on the public's right and need to know. The media's right to report is exercised when they report a press release. A flawed press release that enhances a story by calumny creates an even larger story by informing the public of injustice, deception, abuse of power of those creating the calumny. It is not an obstruction of privilege but an opportunity to do that which the first amendment was intended to do, mainly inform and protect the public with a subsequent story.

A false press release published by the media stating as matter of fact that an individual has committed a felony deprives one of his fifth amendment rights in two ways:

1. Without trial, or due process he is judged guilty of crime
2.by applying the privilege one cannot seek judicial remedy to clear his name or prevent further harm to himself or his property.

The sixth amendment right to a public trial is thwarted. The media ,his accuser, through privilege cannot be confronted and ongoing harm continues.

The Eighth amendment prohibiting cruel and unusual punishment is circumvented through privilege. The point of the calumny in the press release and story was to inflict harm. To label one a felon is unusual punishment.

The fourteenth amendment guaranteeing equal protection of the law is violated since the privilege granted the media ,as applied in Illinois law, is absolute therefore the individual is at the mercy of the media with no recourse in the judicial system to life , liberty or pursuit of happiness if the media is chosen as a tool to inflict harm on the individual.

The media is granted the ability to:

1. Label one a felon under the color of law.
2. Violate one's rights with privilege to do so
3. Inflict ongoing harm upon an individual and never be subject to judicial restraint.
4. Through abandonment of duty to inform, leave an individual open injury by not correcting that which injured the person in the first place causing ongoing harm.

The media and it's privilege are always above the law in Illinois contrary to the fourteenth amendment

Anything above the law breads corruption. Anything above the law that cannot be challenged, such as the fair report privilege, is above due process. Our legal system is based on due process. If the fair report privilege in Illinois cannot be challenged, it is contrary to the Constitution and should be found unconstitutional.

## STATEMENT OF THE CASE

When rendering an opinion on petitioners Tax Court case, the Tax Court Judge made a false statement creating a calumny under the color of law, stating as a matter of fact, the petitioner had committed a felony. The IRS issued a press release containing the calumny and the defendant newspapers repeated the calumny in their articles. Appellant sued the newspapers for defamation. The cases were dismissed by the circuit court by applying the fair report privilege and Illinois law that said no set of facts or circumstances could exist that could overcome the privilege and permit a cause of action against the newspapers. Discovery was not permitted on the calumny. After disclosure of the calumny and inspection of the record in the Tax Court case, defendants took no action to correct their false publication.

The fair report privilege is found in the Restatement(Second) of Torts @ 611. Guidelines are established for applying the fair report privilege. Privilege is presumed when you have an occurrence, some official action taken, arrest, or some legal situation that should be reported. The proceedings, taken as a whole, are always where one looks for the major issue of a legal case. A calumny reported in a press release cannot sustain the application of the privilege. The calumny by it's nature should not be protected by privilege. After discovery of the calumny , privilege is lost when those applying the privilege take no action to stop the harm their deed has caused or continues to cause.

In the alternative, when the publisher of the defamatory statement relies on the fair report privilege as a defense and knowingly conceals truth through a calumny, he becomes a perpetrator to the calumny and loses privilege for fair report. Discovery was needed but denied on this issue. This consistently applies the law as found in the Restatement (Second) of Torts @ 611.

The defendants participated in the calumny and failed to act to prevent their actions from harming plaintiff therefore they are not subject to privilege and are liable for their actions.

## ARGUMENT

Newspapers have power. The IRS ,a Tax Court Judge and the papers themselves know it and rely on it. In this case, a Judge provided a false statement, the IRS issued a press release containing it, and the newspaper printed it. The Judge is smart, knowing the record, he did not accidently create a calumny. The IRS is smart, they know how to use a calumny. The defendants were confident they could report the calumny under privilege and not be held liable for defamation due to privilege. By their own words, the calumny was shocking. The calumny was good enough to report but not good enough to correct when they found it false. The parties in this case have way to much power for their collective actions never to be subject to judicial review. The Third Appellate Court of Illinois sees their actions as unquestionable resulting in a presumptive conclusion that newspapers can be fed anything by way of press release, regardless of how fairly it reports the proceeding, and they are not legally accountable for what they print.

The Appellate Court applied the fair report privilege to the article written since it was a restatement of a government written statement. Contents of the statement were not considered. A newspaper relies on the accuracy of a government statement. Petitioner argues that a flawed press release containing a calumny is not subject to privilege when after discovery of the calumny the newspaper does not correct it's defamatory statement. The defendants chose to ignore truth and perpetuate the calumny. Defamation results to the plaintiff and damages can be sought. The aggressive action of defamation occurs when the damage is sustained as when the public speaks of or repeats the original article. The perpetual defamation that the article being repeated produces is no different that the original publication's damage. The article was printed to be remembered. If the article is read two years after original publication it still defames because it was not corrected by the defendants.

The article did not report an occurrence, nor an official action, nor the truth, it reported a calumny.

The Appellate Court considered fair report privilege and the incremental harm doctrine. Their reasoning is flawed. Once the calumny is considered there is no incremental harm, the calumny is what injures the petitioner in the first place and continues to injure.

The publication is only accurate and fair if it is true. Once the calumny is considered the article is not fair or true. Summarily dismissing a cause of action without considering the truth or allowing a plaintiff to establish truth is a presumptive conclusion denying due process.

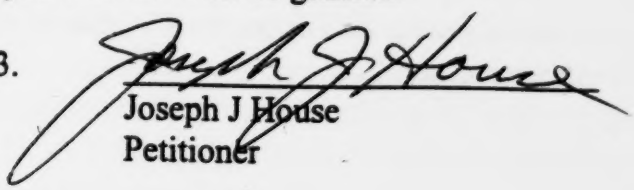
The legal principals behind the fair report privilege are sound if they are applied in an open minded legal environment. Presumptively assuming that the fair report privilege is absolute is contrary to due process. The media is a commercial enterprise and granting absolute privileges to the media is contrary to the fourteenth amendment.

## CONCLUSION

This case presents serious due process issues concerning the right of a state court to prohibit prosecution of a legal case on the conclusive presumption that no set of circumstances and facts can ever exist that could maintain a cause of action where the fair report privilege is invoked by the defendant.

Wherefore it is prayed that this writ be granted.

Dated April 4,2003.



Joseph J House
Petitioner